



## ENVIRONMENTAL PROTECTION AGENCY

### 40 CFR Part 52

[EPA-R09-OAR-2021-0748; FRL-9217-02-R9]

#### Air Plan Approval; Arizona; Maricopa County Air Quality Department

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Final rule.

**SUMMARY:** The Environmental Protection Agency (EPA) is taking final action to approve a revision to the Maricopa County Air Quality Department (MCAQD) portion of the Arizona State Implementation Plan (SIP). This revision concerns emissions of volatile organic compounds (VOC). We are approving rescissions of local rules that regulate these emission sources under the Clean Air Act (CAA or the Act).

**DATES:** This rule is effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

**ADDRESSES:** The EPA has established a docket for this action under Docket ID No. EPA-R09-OAR-2021-0748. All documents in the docket are listed on the <https://www.regulations.gov> web site. Although listed in the index, some information is not publicly available, e.g., Confidential Business Information or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, is not placed on the Internet and will be publicly available only in hard copy form. Publicly available docket materials are available through <https://www.regulations.gov>, or please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section for additional availability information. If you need assistance in a language other than English or if you are a person with disabilities who needs a reasonable accommodation at no cost to you, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section.

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**SUPPLEMENTARY INFORMATION:** Throughout this document, “we,” “us” and “our” refer to the EPA.

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## I. Proposed Action

On February 10, 2022 (87 FR 7784), the EPA proposed to approve the following rule rescissions into the Arizona SIP.

Rule number	Title	Local adopted date	SIP approved date	FR citation
27	Performance Tests	June 23, 1980	April 12, 1982	47 FR 15579
32 A	Odors and Gaseous Emissions (General prohibitions)	August 12, 1971	July 27, 1972	37 FR 15080
32 B	Odors and Gaseous Emissions (Treatment or processing of animal or vegetable matter)	August 12, 1971	July 27, 1972	37 FR 15080
32 C	Odors and Gaseous Emissions (Storage requirements)	August 12, 1971	July 27, 1972	37 FR 15080
32 D	Odors and Gaseous Emissions (Stack, vent, or other outlet)	August 12, 1971	July 27, 1972	37 FR 15080
32 E	Odors and Gaseous Emissions (Hydrogen sulfide)	August 12, 1971	July 27, 1972	37 FR 15080
32 F	Odors and Gaseous Emissions (Relating to sulfur oxide and sulfuric acid)	August 12, 1971	July 27, 1972	37 FR 15080
34 A	Organic Solvents-Volatile Organic Compounds (VOC)	June 23, 1980	May 5, 1982	47 FR 19326
34 D.1	Dry Cleaning	June 23, 1980	May 5, 1982	47 FR 19326
34 E.1	Spray Paint and Other Surface Coating Operations (General Requirements)	June 23, 1980	May 5, 1982	47 FR 19326

34 E.3	Spray Paint and Other Surface Coating Operations (Architectural Coating)	June 23, 1980	May 5, 1982	47 FR 19326
34 L	Cutback Asphalt	June 23, 1980	May 5, 1982	47 FR 19326
81	Operation	August 12, 1971	July 27, 1972	37 FR 15080
340	Cutback and Emulsified Asphalt	September 13, 1988	February 1, 1996	61 FR 3578

We proposed to approve the rescission of these rules because we determined that the rescissions comply with the relevant CAA requirements. Our proposed action contains more information on the rules and our evaluation.

## II. Public Comments and EPA Responses

The EPA's proposed action provided a 30-day public comment period. During this period, we received one comment from the City of Phoenix in support of the EPA's February 10, 2022 proposed action to rescind the proposed rules from the Arizona's SIP. We acknowledge the comment, and we are approving the rescissions of these rules from the SIP. We also received one anonymous comment which we respond to below.

**Comment:** The commenter's primary concern with the EPA's proposed action is that it appears to "remov[e] longstanding local rules regarding air quality, due to the fact that those same standards are covered nationally," which would be problematic if "this rule change was requested with the intention of ultimately undoing national standards." The commenter notes that if a potential change in the national standards took place, "[rolling back air quality standards] would be far smoother than if the local rules were still in the way of those whose aim is government deregulation at the expense of the environment." They recommend that these rules remain in place as "a backup option to keeping important public health rules." The commenter also raises environmental justice concerns with respect to the proposed SIP modification and stresses the need to maintain the National Ambient Air Quality Standard (NAAQS) to protect marginalized communities within the Phoenix and South Phoenix area.

**EPA's Response:** As we noted in our February 10, 2022 proposed rule, modifications to a SIP must comply with all requirements of the CAA. The CAA contains several anti-backsliding provisions, which preclude a state from altering or removing provisions from an approved implementation plan if the revision would reduce air quality protection.<sup>1</sup> For example, under CAA section 110(l), a SIP revision cannot be approved if it will interfere with attainment or other applicable CAA requirements. In addition, CAA section 193 prohibits any control measure in effect in a nonattainment area prior to the enactment of the CAA Amendments of 1990 to be modified after enactment, unless such modification yields equivalent or greater emission reductions. Consistent with these anti-backsliding provisions, there are circumstances in which it may be reasonable to relieve states of requirements that are no longer necessary, or that can be replaced by other forms of protection that might better meet the local needs and circumstances of an area.

As we stated in the Technical Support Document (TSD) to our proposal,<sup>2</sup> the State of Arizona submitted Maricopa County's Air Quality Regulations for approval into the Arizona SIP on January 28, 1972. The MCAQD revised various rules in the 1980s to reflect CAA requirements to implement reasonably available control technology (RACT) for various source categories and to generally modernize their local rule book. The revised rules were renumbered from the existing two-digit system to a three-digit system with the unamended two-digit rules remaining in the SIP. Some of the locally revised rules were not submitted to the EPA for inclusion into the SIP at the time. As a result, there is a difference in requirements between some of the SIP approved two-digit rules and the locally adopted three-digit rules which can be a problem when the EPA, MCAQD, the regulated community, or the public is trying to determine the applicable rule. This is known as a SIP gap. In April 2016, the EPA analyzed this SIP gap to determine if the older two-digit rules could potentially be replaced by newer provisions that are

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<sup>1</sup> See 78 FR 34178, 34211 (June 6, 2013).

<sup>2</sup> See TSD, Docket ID: EPA-R09-OAR-2021-0748.

currently only locally applicable. This analysis had several recommendations for updating the SIP, including the rescission of obsolete two- and three-digit rules without replacement.

The SIP rescissions from our February 10, 2022 proposed rule fall into four categories: 1) nine provisions that do not establish emission limits, enforce the NAAQS, or improve or impact the stringency of other measures in the SIP; 2) two provisions related to a source category subject to a control techniques guideline (CTG) document, for which the State submitted and the EPA approved a negative declaration stating that there are no sources in the nonattainment area covered by that CTG; 3) two provisions that have been superseded by newer SIP-approved rules; and 4) one provision that is not enforceable. Further explanation on the EPA's rationale for the proposed approval is provided below.

For the first category, Rule 27, Rule 32 sections A, C, D, and Rule 34 section E do not contain specific emissions limits or other elements necessary for enforcement. For example, Rule 32 section C states:

Materials including, but not limited to, solvents or other volatile compounds, paints, acids, alkalies, pesticides, fertilizer and manure shall be processed, stored, used and transported in such a manner and by such means that they will not unreasonably evaporate, leak, escape or be otherwise discharged into the ambient air so as to cause or contribute to air pollution; and where means are available to reduce effectively the contribution to air pollution from evaporation, leakage or discharge, the installation and use of such control methods, devices or equipment shall be mandatory.

This provision contains no specific work practice, emission limitation, or enforcement mechanism that would result in the reduction of emissions. Therefore, the EPA has concluded, based on a CAA section 110(l) analysis, that removal of this provision would not interfere with Maricopa County's progress toward attainment, reasonable further progress (RFP), or any other applicable CAA requirement.

Additionally, Rule 32 sections B and E, Rule 34 section D.1, and Rule 81 do not regulate categories of emissions related to any NAAQS, and thus do not contribute to Maricopa County's attainment of the NAAQS. For example, Rule 34 section D.1 regulates the emission of perchloroethylene. In 1996, the EPA deleted perchloroethylene from the definition of VOC on

the basis that the chemical has negligible photochemical reactivity.<sup>3</sup> Because these emissions are no longer considered VOC emissions under the CAA, Maricopa County can no longer consider their reduction as progress towards attaining the NAAQS.<sup>4</sup> Thus, the EPA has concluded, based on a 110(l) analysis, that removal of the provision will not interfere with the area's progress towards attainment or any other applicable CAA requirement. Additional analysis for each provision in this category can be found in the TSD in the docket for the proposal.

For the second category, Rule 34 section L and Rule 340 contain similar requirements for the regulation of cutback asphalt, which is a source category subject to the CTG EPA-450/2-77-037 "Cutback Asphalt." When there are no existing sources in a nonattainment area covered by a particular CTG document, or no major non-CTG sources of NO<sub>x</sub> or VOC, states may, in lieu of adopting RACT requirements for those sources, adopt negative declarations certifying that there are no such sources in the relevant nonattainment area. The State submitted, and the EPA approved, a negative declaration in Maricopa County on January 7, 2021, (86 FR 971) for cutback asphalt. This negative declaration applies to both Rule 34 section L and Rule 340. Therefore, the EPA has concluded, based on a 110(l) analysis, that because there are no sources of emissions being regulated by Rule 34 section L and Rule 340 in the nonattainment area, removal of these provisions will not interfere with Maricopa County's progress towards attainment or any other applicable CAA requirement.

For the third category, Rule 32 section F and Rule 34 section A were both superseded by subsequent SIP submissions from Maricopa County. Rule 32 section F was superseded by SIP Rule 510, "Air Quality Standards" (86 FR 54628, October 04, 2021), and Rule 34 section A was superseded by an updated definition for VOC in the SIP, Maricopa Rule 100, "General Provisions and Definitions" (84 FR 13543, April 5, 2019). We conclude that the actions approving Rule 100 and Rule 510 into the SIP are adequate to ensure the removal of Rule 32

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<sup>3</sup> 61 FR 5688 (February 7, 1996).

<sup>4</sup> See id. at 5689.

section F and Rule 34 section A would not interfere with Maricopa County's progress towards attainment, RFP, or any other applicable CAA requirement.

For the fourth category, there are no test methods that apply to the regulation in Rule 34 section E.1, which requires surface coating operations to utilize an "enclosed area designed to contain not less than ninety-six percent (96%) by weight of the overspray." Without a test method that can determine if a spray enclosure can capture 96% of the overspray, the provision is unenforceable and has no impact on the air quality in Maricopa County. The EPA finds that the provision's removal would therefore not interfere with attainment, RFP, or any other applicable CAA requirement.

The provisions proposed to be rescinded from the Arizona SIP generally do not achieve emission reductions or are already codified elsewhere in the SIP. The removal of these rules would not impact the overall stringency of the Arizona SIP, and as a result, the approval of this rule action will allow Maricopa to maintain rules in the SIP that implement, maintain, and enforce the NAAQS.

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable federal regulations.<sup>5</sup> Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the CAA. As described in our proposed rule and reiterated here, approval of these rescissions complies with CAA sections 110(l) and 193 because these SIP revisions would not interfere with any applicable CAA requirements, including requirements concerning RFP and attainment of the NAAQS.

### **III. EPA Action**

No comments were submitted that change our assessment of the rule rescissions as described in our proposed action. Therefore, as authorized in section 110(k)(3) of the Act, the EPA is fully approving these rule rescissions into the Arizona SIP. The rule rescissions will

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<sup>5</sup> 42 U.S.C. 7410(k); 40 CFR 52.02(a).

remove the previously approved Rule 27, Rule 32 sections A (all subsections), B, C, D, E, and F; Rule 34 sections A, D.1, E.1, E.3 and L (all subsections); Rule 81; and Rule 340 from the SIP.<sup>6</sup>

#### **IV. Incorporation by Reference**

In this rule, the EPA is finalizing regulatory text that includes incorporation by reference. The EPA is also finalizing deletion of rules that were previously incorporated by reference from the applicable Arizona SIP. In accordance with requirements of 1 CFR 51.5, as discussed in Sections I, II and III of this preamble, the EPA is finalizing the incorporation by reference for the rescission of the Arizona rules described in the amendments to 40 CFR part 52 set forth below. Therefore, these materials have been approved by the EPA for removal from the SIP and will be incorporated by reference in the next update to the SIP compilation.<sup>7</sup> The EPA has made, and will continue to make, these documents available through *www.regulations.gov* and at the EPA Region IX Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information).

#### **V. Statutory and Executive Order Reviews**

Under the Clean Air Act, the Administrator is required to approve a SIP submission that complies with the provisions of the Act and applicable federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, the EPA's role is to approve state choices, provided that they meet the criteria of the Clean Air Act. Accordingly, this action merely approves state law as meeting federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

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<sup>6</sup> The provisions of Rule 34 were inadvertently omitted from our original action converting the Arizona SIP to the tabular notebook format on November 23, 2016 (81 FR 85038). We will recodify the remaining paragraphs of Rule 34 (consistent with this action's rescissions) in a separate rulemaking, and as such, our regulatory text will not address any conflicting provisions.

<sup>7</sup> 62 FR 27968 (May 22, 1997).



- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 et seq.);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the Clean Air Act; and
- Does not provide the EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian reservation land or in any other area where the EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

The Congressional Review Act, 5 U.S.C. section 801 et seq., as added by the Small Business Regulatory Enforcement Fairness Act of 1996, generally provides that before a rule

may take effect, the agency promulgating the rule must submit a rule report, which includes a copy of the rule, to each House of the Congress and to the Comptroller General of the United States. The EPA will submit a report containing this action and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to publication of the rule in the Federal Register. A major rule cannot take effect until 60 days after it is published in the Federal Register. This action is not a “major rule” as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[insert date 60 days after date of publication in the Federal Register]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

#### **List of Subjects in 40 CFR Part 52**

Environmental protection, Air pollution control, Incorporation by reference, Intergovernmental relations, Nitrogen Oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur Oxides, Volatile organic compounds.

Dated: **July 7, 2022.**

Martha Guzman Aceves,  
*Regional Administrator,*  
*Region IX.*

For the reasons stated in the preamble, EPA amends part 52, chapter I, Title 40 of the Code of Federal Regulations as follows:

**PART 52 - APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS**

1. The authority citation for part 52 continues to read as follows:

**Authority:** 42 U.S.C. 7401 *et seq.*

**Subpart D – Arizona**

**§ 52.120 [Amended]**

2. In § 52.120 in paragraph (c) amend “Table 4 to Paragraph (c) - EPA-Approved Maricopa County Air Pollution Control Regulations” by removing the entries for “Rule 27”, “Rule 32 (Paragraphs A through F only)”, “Rule 81”, and “Rule 340”.

[FR Doc. 2022-15026 Filed: 7/14/2022 8:45 am; Publication Date: 7/15/2022]